

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL WILLINGHAM,

No. C 11-05391 YGR (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

O. POUNCE, et al.,

Defendants.

On June 16, 2014, the Court issued an Order of Dismissal with Leave To Amend.

Specifically, the Court granted Plaintiff twenty-eight days from the date of the Order to file a Second Amended Complaint ("SAC") to allege facts sufficient to state a cognizable constitutional claim.

Plaintiff was warned that the failure to timely file a SAC would result in the dismissal of this action for failure to prosecute. The time for Plaintiff to file his SAC has passed, and no SAC has been filed. Taking into account the salient factors set forth in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), the Court finds that dismissal is warranted under Federal Rule of Civil Procedure 41(b).¹ See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 989, 992 (9th Cir. 1999) (affirming dismissal of action following plaintiff's failure to amend complaint after receiving leave to do so, where the interest in expeditious resolution of litigation, the court's management of its docket, and avoiding prejudice to defendants favored dismissal). Accordingly,

IT IS HEREBY ORDERED that the complaint in the above-captioned action is DISMISSED. The Clerk of the Court shall enter judgment, terminate all pending motions and close the file.

IT IS SO ORDERED.

DATED: July 23, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

¹ If and when Plaintiff is prepared to pursue his claims, he may file a new civil rights action. The limitations period to file a § 1983 action in California is two years, but it is tolled for up to two years during a continuous period of incarceration. See *Silva v. Crain*, 169 F.3d 608, 610 (9th Cir. 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a § 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and adding § 335.1 to establish two-year residual limitations period for personal injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of continual imprisonment).